

ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR08-489

LARRY RICE,

APPELLANT

V.

STATE OF ARKANSAS,

APPELLEE

Opinion Delivered 29 OCTOBER 2008

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR2001-4227 & CR2002-2240]

THE HONORABLE BARRY SIMS,
JUDGE

AFFIRMED

D.P. MARSHALL JR., Judge

The questions presented are whether the trial court abused its discretion by denying Rice’s morning-of-hearing motion to continue, and if so, whether prejudice resulted. *Stenhouse v. State*, 362 Ark. 480, 488, 209 S.W.3d 352, 358 (2005). At the start of the probation-revocation hearing, Rice’s attorney stated: “Judge, we’ll ask before we get started, that he does want to hire counsel on this. I told him of course that I would mention that a required continuance—.” The trial judge interrupted and said, “Okay, thank you. That’s denied.”

The circuit court had been living with Rice’s case for more than a year by the time of the December 2007 probation-revocation hearing. Both Rice’s appointed counsel and the prosecutor were ready to proceed on the day of the hearing.

Witnesses were present and prepared to testify. Rice filed no written motion seeking a continuance. Rice did not mention whether he had already hired a new lawyer. The public defender's office had been representing him for more than a year. Rice did not offer any specifics about why he was now seeking to hire private counsel. During the hearing, the prosecutor stated that Rice had requested his hearing be passed several times and had received at least one continuance. Rice's counsel did not dispute this history. All of these facts informed the circuit court's discretion and likewise weigh in our appellate review of that judgment call. *Beyer v. State*, 331 Ark. 197, 203, 962 S.W.2d 751, 755 (1998).

“The constitutional right to counsel is a shield, not a sword, and a defendant may not manipulate this right for the purpose of delaying the trial or playing ‘cat-and-mouse’ with the court.” *Wilson v. State*, 88 Ark. App. 158, 167, 196 S.W.3d 511, 516–17 (2004). Rice's right to the counsel of his choosing was not absolute. *Edwards v. State*, 321 Ark. 610, 615, 906 S.W.2d 310, 313 (1995). Once competent counsel was obtained, Rice's request for new counsel had to be considered in the context of the public's interest in the prompt dispensation of justice. *Cooper v. State*, 317 Ark. 485, 491, 879 S.W.2d 405, 409 (1994). The circuit court should have allowed Rice to finish his motion, asked the prosecutor for a response, and explored the issue before ruling. Making a detailed record always helps appellate review. But considering the record as a whole, which the circuit court knew well, we see no abuse

of discretion. *Stenhouse*, 362 Ark. at 488, 209 S.W.3d at 358. In any event, Rice has neither argued nor shown that the denial of his motion resulted in prejudice amounting to a denial of justice—a requirement for reversal. *Ibid.*

Affirmed.

ROBBINS and VAUGHT, JJ., agree.